



## **Idaho Conservation League**

Troy Saffle  
Regional Water Quality Manager  
Idaho Department of Environmental Quality  
900 N. Skyline, Suite B.  
Idaho Falls, Idaho 83402

2/11/10

RE: Idaho Conservation League additional comments on second draft of 401 certification for the draft NPDES permit for the City of Driggs' wastewater treatment plant (ID0020141)

Dear Mr. Saffle,

Thank you for the opportunity to provide additional comments on Idaho's second version of its draft 401 certification for the draft NPDES permit for City of Driggs' wastewater treatment plant (ID0020141).

We remain concerned that neither the State of Idaho nor the EPA has substantively reviewed the Driggs draft 401 certification permit's effluent limits to ensure that this discharge does not result in an unacceptable degradation of the water quality in the receiving water and waters downstream.

As we noted in our prior comments, Idaho currently lacks an anti-degradation implementation plan. Such an implementation plan is required pursuant to the Clean Water Act and Idaho's failure to have a lawful anti-degradation plan is in violation of the Clean Water Act. Since Idaho does not have a lawful anti-degradation policy it is not possible for DEQ to assure that the draft permit conditions are sufficient to protect downstream waters from degradation.

Statements in the draft 401 certification that state that the permit is in compliance with the Clean Water Act and Idaho's IDAPA rules governing water quality (inclusive of Idaho's anti-degradation policy) are not supported by fact as neither the State nor EPA has conducted a lawful anti-degradation analysis. Illustrative of this shortcoming, the State has not revealed what level of anti-degradation review was (presumably) conducted by DEQ or what anti-degradation tier(s) the receiving water is classified as. In other words, irrespective of the fact that Idaho lacks a valid anti-degradation, no sufficient analysis was done anyway. As such, the issuance of this 401 certification is arbitrary and capricious and it cannot be issued until this matter is resolved.

DEQ states that effluent limits in the proposed Driggs NPDES are sufficient to ensure that the

State's numeric and narrative criteria *will* be met. However, it is not clear when the State's WQ criteria *will* be met. In the instance of bacteria (a pollutant for which the receiving water is listed as 303(d)), it is unclear to us how DEQ can conclude WQ criteria will be met since DEQ has not developed a TMDL. In the absence of a TMDL it is not clear to us how DEQ can deem the proposed limits as sufficient to ensure CWA compliance. We understand that DEQ's actions on this matter are consistent with DEQ's policy regarding low priority waters lacking TMDLs, however we question as to whether this policy is appropriately crafted and employed.

Further we are concerned about DEQ's articulation that first time limits (such as ammonia) are sufficient to ensure that designated and existing uses are protected to the level required by anti-degradation requirements in the CWA. Merely having a limit does not ensure that the limit is sufficient. Indeed, the fact that DEQ and EPA have crafted an interim limit that is approximately 25 times less stringent than the final limit infers that the current discharges and the interim limits are causing degradation. If not, why require a more stringent final limit?

Similarly, as in the case of Total P and Nitrate plus Nitrite, the lack of limits offers no assurance that the receiving water will not be degraded.

EPA's failure to provide for effluent limits on flow further complicates DEQ's task of ensuring that anti-degradation concerns are addressed. Absent flow limits, DEQ is not able to ensure that the total load of pollutants from the facility to receiving water does not increase and degrade the receiving water. The Driggs facility has recorded effluent flows in excess of the design capacity of the facility.

Thank you for your consideration of our comments on this important matter. Please do not hesitate to contact me at 208-345-6933 ext 24 or at [jhayes@idahoconservation.org](mailto:jhayes@idahoconservation.org) if you have any questions about comments.

Sincerely,

*S/Justin Hayes*

Justin Hayes  
Program Director

cc. Doug Conde, Idaho AG's office  
Brian Nickel, EPA Region 10